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 City of Albany

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SWAMI SHRADDHANANDA SARASWATI, an
 individual

Plaintiff,

vs.

CITY OF BERKELEY, CITY OF ALBANY,
 PACIFIC GAS & ELECTRIC COMPANY, a
 California registered domestic stock corporation,
 FRANK L. YEE, MAY L. YEE, and DOES 1-100,
 Inclusive

Defendants.

Case No. 3:17-CV-04940

**DEFENDANT CITY OF ALBANY'S
 ANSWER TO PLAINTIFF'S
 COMPLAINT FOR INJUNCTIVE
 RELIEF AND DAMAGES**

Demand for Jury Trial

Action Filed: August 24, 2017

Defendant CITY OF ALBANY (hereinafter "Defendant"), by and through its undersigned
 counsel, hereby Answers the Complaint filed by Plaintiff SWAMI SHRADDHANANDA
 SARASWATI, (hereinafter "Plaintiff") and each cause of action contained therein, as follows:

1. Answering paragraph 1 of Plaintiff's Complaint, Defendant does not have sufficient
 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
 every allegation contained therein.

2. Answering paragraph 2 of Plaintiff's Complaint, Defendant does not have sufficient
 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
 every allegation contained therein.

1 3. Answering paragraph 3 of Plaintiff's Complaint, it contains no allegations against this
2 Defendant and no response is necessary. However, should a response be deemed necessary,
3 Defendant denies every allegation and claim for relief contained therein.

4 4. Answering paragraph 4 of Plaintiff's Complaint, Defendant admits that this Court
5 currently has subject matter jurisdiction but denies any violations.

6 5. Answering paragraph 5 of Plaintiff's Complaint, Defendant admits that venue is
7 currently proper but denies any violations.

8 6. Answering paragraph 6 of Plaintiff's Complaint, Defendant does not have sufficient
9 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
10 every allegation contained therein.

11 7. Answering paragraph 7 of Plaintiff's Complaint, Defendant does not have sufficient
12 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
13 every allegation contained therein.

14 8. Answering paragraph 8 of Plaintiff's Complaint, it contains no allegations against this
15 Defendant and no response is necessary. However, should a response be deemed necessary,
16 Defendant denies every allegation contained therein.

17 9. Answering paragraph 9 of Plaintiff's Complaint, it contains no allegations against this
18 Defendant and no response is necessary. However, should a response be deemed necessary,
19 Defendant denies every allegation and claim for relief contained therein.

20 10. Answering paragraph 10 of Plaintiff's Complaint, Defendant does not have sufficient
21 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
22 every allegation contained therein.

23 11. Answering paragraph 11 of Plaintiff's Complaint, Defendant denies every allegation
24 contained herein.

25 12. Answering paragraph 12 of Plaintiff's Complaint, Defendant denies every allegation
26 contained herein.

27 13. Answering paragraph 13 of Plaintiff's Complaint, it contains no allegations against
28 this Defendant and no response is necessary. However, should a response be deemed necessary,

1 Defendant denies every allegation contained therein.

2 14. Answering paragraph 14 of Plaintiff's Complaint, Defendant does not have sufficient
3 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
4 every allegation contained herein.

5 15. Answering paragraph 15 of Plaintiff's Complaint, Defendant denies every allegation
6 contained herein.

7 16. Answering paragraph 16 of Plaintiff's Complaint, Defendant denies every allegation
8 contained herein.

9 17. Answering paragraph 17 of Plaintiff's Complaint, it contains no allegations against
10 this Defendant and no response is necessary. However, should a response be deemed necessary,
11 Defendant denies every allegation contained herein.

12 18. Answering paragraph 18 of Plaintiff's Complaint, Defendant admits the allegations
13 contained therein pertaining to this Defendant.

14 19. Answering paragraph 19 of Plaintiff's Complaint, Defendant does not have sufficient
15 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
16 every allegation contained herein.

17 20. Answering paragraph 20 of Plaintiff's Complaint, Defendant does not have sufficient
18 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
19 every allegation contained herein.

20 21. Answering paragraph 21 of Plaintiff's Complaint, Defendant does not have sufficient
21 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
22 every allegation contained herein.

23 22. Answering paragraph 22 of Plaintiff's Complaint, Defendant does not have sufficient
24 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
25 every allegation contained herein.

26 23. Answering paragraph 23 of Plaintiff's Complaint, Defendant does not have sufficient
27 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
28 every allegation contained herein.

1 24. Answering paragraph 24 of Plaintiff's Complaint, Defendant denies every allegation
2 contained herein.

3 25. Answering paragraph 25 of Plaintiff's Complaint, Defendant denies every allegation
4 contained herein.

5 26. Answering paragraph 26 of Plaintiff's Complaint, Defendant denies every allegation
6 contained herein.

7 27. Answering paragraph 27 of Plaintiff's Complaint, Defendant does not have sufficient
8 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
9 every allegation contained herein.

10 28. Answering paragraph 28 of Plaintiff's Complaint, Defendant does not have sufficient
11 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
12 every allegation contained herein.

13 29. Answering paragraph 29 of Plaintiff's Complaint, Defendant hereby incorporates
14 paragraphs 1 through 28 of this First Claim, as though fully set forth herein.

15 30. Answering paragraph 30 of Plaintiff's Complaint, it contains no allegations against
16 this Defendant and no response is necessary. However, should a response be deemed necessary,
17 Defendant denies every allegation contained therein.

18 31. Answering paragraph 31 of Plaintiff's Complaint, Defendant does not have sufficient
19 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
20 every allegation contained herein.

21 32. Answering paragraph 32 of Plaintiff's Complaint, Defendant denies every allegation
22 contained herein.

23 33. Answering paragraph 33 of Plaintiff's Complaint, it contains no allegations against
24 this Defendant and no response is necessary. However, should a response be deemed necessary,
25 Defendant denies every allegation contained therein.

26 34. Answering paragraph 34 of Plaintiff's Complaint, it contains no allegations against
27 this Defendant and no response is necessary. However, should a response be deemed necessary,
28 Defendant denies every allegation contained therein.

1 35. Answering paragraph 35 of Plaintiff's Complaint, Defendant does not have sufficient
2 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
3 every allegation contained herein.

4 36. Answering paragraph 36 of Plaintiff's Complaint, Defendant does not have sufficient
5 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
6 every allegation contained herein.

7 37. Answering paragraph 37 of Plaintiff's Complaint, Defendant denies the allegations
8 contained therein.

9 38. Answering paragraph 38 of Plaintiff's Complaint, Defendant denies the allegations
10 contained therein.

11 39. Answering paragraph 39 of Plaintiff's Complaint, Defendant denies the allegations
12 contained therein.

13 40. Answering paragraph 40 of Plaintiff's Complaint, Defendant hereby incorporates
14 paragraphs 1 through 39 of this Second Claim, as though fully set forth herein.

15 41. Answering paragraph 41 of Plaintiff's Complaint, Defendant does not have sufficient
16 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
17 every allegation contained herein.

18 42. Answering paragraph 42 of Plaintiff's Complaint, Defendant denies the allegations
19 contained therein.

20 43. Answering paragraph 43 of Plaintiff's Complaint, Defendant denies the allegations
21 contained therein.

22 44. Answering paragraph 44 of Plaintiff's Complaint, Defendant denies the allegations
23 contained therein.

24 45. Answering paragraph 45 of Plaintiff's Complaint, Defendant hereby incorporates
25 paragraphs 1 through 44 of this Third Claim, as though fully set forth herein.

26 46. Answering paragraph 46 of Plaintiff's Complaint, it contains no allegations against
27 this Defendant and no response is necessary. However, should a response be deemed necessary,
28 Defendant denies every allegation contained therein.

1 47. Answering paragraph 47 of Plaintiff's Complaint, Defendant denies the allegations
2 contained therein.

3 48. Answering paragraph 48 of Plaintiff's Complaint, it contains no allegations against
4 this Defendant and no response is necessary. However, should a response be deemed necessary,
5 Defendant denies every allegation contained therein.

6 49. Answering paragraph 49 of Plaintiff's Complaint, Defendant denies the allegations
7 contained therein.

8 50. Answering paragraph 50 of Plaintiff's Complaint, Defendant denies the allegations
9 contained therein.

10 51. Answering paragraph 51 of Plaintiff's Complaint, Defendant denies the allegations
11 contained therein.

12 52. Answering paragraph 52 of Plaintiff's Complaint, Defendant denies the allegations
13 contained therein.

14 53. Answering paragraph 53 of Plaintiff's Complaint, Defendant denies the allegations
15 contained therein.

16 54. Answering paragraph 54 of Plaintiff's Complaint, Defendant denies the allegations
17 contained therein.

18 55. Answering paragraph 55 of Plaintiff's Complaint, Defendant hereby incorporates
19 paragraphs 1 through 54 of this Fourth Claim, as though fully set forth herein.

20 56. Answering paragraph 56 of Plaintiff's Complaint, it contains no allegations against
21 this Defendant and no response is necessary. However, should a response be deemed necessary,
22 Defendant denies every allegation contained therein.

23 57. Answering paragraph 57 of Plaintiff's Complaint, Defendant does not have sufficient
24 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
25 every allegation contained herein.

26 58. Answering paragraph 58 of Plaintiff's Complaint, Defendant denies the allegations
27 contained therein.

1 59. Answering paragraph 59 of Plaintiff's Complaint, Defendant denies the allegations
2 contained therein.

3 60. Answering paragraph 60 of Plaintiff's Complaint, Defendant denies the allegations
4 contained therein.

5 61. Answering paragraph 61 of Plaintiff's Complaint, Defendant denies the allegations
6 contained therein.

7 62. Answering paragraph 62 of Plaintiff's Complaint, Defendant hereby incorporates
8 paragraphs 1 through 61 of this Fourth Claim, as though fully set forth herein.

9 63. Answering paragraph 63 of Plaintiff's Complaint, it contains no allegations against
10 this Defendant and no response is necessary. However, should a response be deemed necessary,
11 Defendant denies every allegation contained therein.

12 64. Answering paragraph 64 of Plaintiff's Complaint, it contains no allegations against
13 this Defendant and no response is necessary. However, should a response be deemed necessary,
14 Defendant denies every allegation contained therein.

15 65. Answering paragraph 65 of Plaintiff's Complaint, it contains no allegations against
16 this Defendant and no response is necessary. However, should a response be deemed necessary,
17 Defendant denies every allegation contained therein.

18 66. Answering paragraph 66 of Plaintiff's Complaint, Defendant does not have sufficient
19 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
20 every allegation contained herein.

21 67. Answering paragraph 67 of Plaintiff's Complaint, Defendant does not have sufficient
22 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
23 every allegation contained herein.

24 68. Answering paragraph 68 of Plaintiff's Complaint, Defendant does not have sufficient
25 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
26 every allegation contained herein.

1 69. Answering paragraph 69 of Plaintiff's Complaint, it contains no allegations against
2 this Defendant and no response is necessary. However, should a response be deemed necessary,
3 Defendant denies every allegation contained therein.

4 70. Answering paragraph 70 of Plaintiff's Complaint, Defendant denies the allegations
5 contained therein.

6 71. Answering paragraph 71 of Plaintiff's Complaint, Defendant denies the allegations
7 contained therein.

8 72. Answering paragraph 72 of Plaintiff's Complaint, Defendant denies the allegations
9 contained therein.

10 73. Answering paragraph 73 of Plaintiff's Complaint, Defendant denies the allegations
11 contained therein.

12 74. Answering paragraph 74 of Plaintiff's Complaint, Defendant hereby incorporates
13 paragraphs 1 through 73 of this Fourth Claim, as though fully set forth herein.

14 75. Answering paragraph 75 of Plaintiff's Complaint, Defendant denies the allegations
15 contained therein.

16 76. Answering paragraph 76 of Plaintiff's Complaint, it contains no allegations against
17 this Defendant and no response is necessary. However, should a response be deemed necessary,
18 Defendant denies every allegation contained therein.

19 77. Answering paragraph 77 of Plaintiff's Complaint, it contains no allegations against
20 this Defendant and no response is necessary. However, should a response be deemed necessary,
21 Defendant denies every allegation contained therein.

22 78. Answering paragraph 78 of Plaintiff's Complaint, Defendant denies the allegations
23 contained therein.

24 79. Answering paragraph 79 of Plaintiff's Complaint, Defendant denies the allegations
25 contained therein.

26 80. Answering paragraph 80 of Plaintiff's Complaint, Defendant denies the allegations
27 contained therein.
28

1 81. Answering paragraph 81 of Plaintiff's Complaint, Defendant does not have sufficient
2 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
3 every allegation contained herein.

4 82. Answering paragraph 82 of Plaintiff's Complaint, Defendant denies the allegations
5 contained therein.

6 83. Answering paragraph 83 of Plaintiff's Complaint, Defendant does not have sufficient
7 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
8 every allegation contained herein.

9 84. Answering paragraph 84 of Plaintiff's Complaint, Defendant denies the allegations
10 contained therein.

11 85. Answering paragraph 85 of Plaintiff's Complaint, Defendant denies the allegations
12 contained therein.

13 86. Answering paragraph 86 of Plaintiff's Complaint, Defendant denies the allegations
14 contained therein.

15 87. Answering paragraph 87 of Plaintiff's Complaint, Defendant denies the allegations
16 contained therein.

17 88. Answering paragraph 88 of Plaintiff's Complaint, Defendant denies the allegations
18 contained therein.

19 89. Answering paragraph 89 of Plaintiff's Complaint, Defendant denies the allegations
20 contained therein.

21 90. Answering paragraph 90 of Plaintiff's Complaint, Defendant denies the allegations
22 contained therein.

23 91. Answering paragraph 91 of Plaintiff's Complaint, Defendant denies the allegations
24 contained therein.

25 92. Answering paragraph 92 of Plaintiff's Complaint, Defendant denies the allegations
26 contained therein.

27 93. Answering paragraph 93 of Plaintiff's Complaint, Defendant denies the allegations
28 contained therein.

1 94. Answering paragraph 94 of Plaintiff's Complaint, Defendant does not have sufficient
2 information or belief to enable it to answer the said paragraph and, on that ground, denies each and
3 every allegation contained herein.

4 95. Answering paragraph 95 of Plaintiff's Complaint, Defendant denies the allegations
5 contained therein.

6 96. Answering paragraph 96 of Plaintiff's Complaint, Defendant denies the allegations
7 contained therein.

8 97. Answering paragraph 97 of Plaintiff's Complaint, Defendant denies the allegations
9 contained therein.

10 98. Answering paragraph 98 of Plaintiff's Complaint, Defendant hereby incorporates
11 paragraphs 1 through 97 of this Fourth Claim, as though fully set forth herein.

12 99. Answering paragraph 99 of Plaintiff's Complaint, it contains no allegations against
13 this Defendant and no response is necessary. However, should a response be deemed necessary,
14 Defendant denies every allegation contained therein.

15 100. Answering paragraph 100 of Plaintiff's Complaint, it contains no allegations against
16 this Defendant and no response is necessary. However, should a response be deemed necessary,
17 Defendant denies every allegation contained therein.

18 101. Answering paragraph 101 of Plaintiff's Complaint, it contains no allegations against
19 this Defendant and no response is necessary. However, should a response be deemed necessary,
20 Defendant denies every allegation contained therein.

21 102. Answering paragraph 102 of Plaintiff's Complaint, it contains no allegations against
22 this Defendant and no response is necessary. However, should a response be deemed necessary,
23 Defendant denies every allegation contained therein.

24 **AFFIRMATIVE DEFENSES**

25 AS A FIRST AFFIRMATIVE DEFENSE to each and every claim for relief of the complaint,
26 the Complaint fails to allege facts sufficient to state a claim upon which relief can be granted.

27 AS A SECOND AFFIRMATIVE DEFENSE to each and every claim for relief of the
28 Complaint, Plaintiff was partially, if not wholly, negligent or otherwise at fault on her own part and

1 should be barred from recovery of that portion of the damages directly attributable to her
2 proportionate share of the negligence or fault, pursuant to the doctrine of comparative negligence.

3 AS A THIRD AFFIRMATIVE DEFENSE to each and every claim for relief of the
4 Complaint, the damages sustained by Plaintiff, if any, were caused, in whole or in part, by the
5 negligence or fault of others for which this Defendant is not liable or responsible.

6 AS A FOURTH AFFIRMATIVE DEFENSE to each and every claim for relief of the
7 Complaint, Plaintiff lacks standing to bring the claims for relief pled in the Complaint.

8 AS A FIFTH AFFIRMATIVE DEFENSE to each and every claim for relief of the
9 Complaint, Plaintiff has waived and/or is estopped from alleging the matters set forth in said
10 complaint.

11 AS A SIXTH AFFIRMATIVE DEFENSE to each and every claim for relief of the
12 Complaint, Plaintiff failed to mitigate her damages.

13 AS A SEVENTH AFFIRMATIVE DEFENSE to each and every claim claim for relief of the
14 Complaint, Plaintiff has failed to state a claim upon which attorney's fees can be awarded.

15 AS AN EIGHTH AFFIRMATIVE DEFENSE to each and every claim for relief of the
16 Complaint, Plaintiff's request for injunctive relief is moot and therefore the action should be
17 dismissed for a lack of subject matter jurisdiction.

18 AS A NINTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
19 Complaint, all conduct of Defendant at the time alleged in Plaintiff's Complaint was lawful under
20 applicable case law, statutes, and governmental rules, regulations, and standards.

21 AS A TENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
22 Complaint, Plaintiff is barred from recovering under any of the claims asserted in the Complaint by
23 the doctrine of unclean hands.

24 AS AN ELEVENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
25 Complaint, Defendant alleges that at all times it acted under legal right or in a good faith belief in the
26 existence of a legal right.

27 AS A TWELFTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
28 Complaint, Plaintiff's claims herein are barred by the applicable statute of limitations, including but

1 not limited to California Code of Civil Procedure §§340, 340.5, California Government Code §§
2 905, 910, 911.2 and Code of Civil Procedure§ 335.1 and/or are barred to the extent provided in
3 Federal Rules of Civil Procedure Rule 15.

4 AS A THIRTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
5 Complaint, Defendant alleges that it is not liable for Plaintiff's allegations because it adheres to a
6 self-evaluation plan and/or transition plan.

7 AS A FOURTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
8 Complaint, Plaintiff has not suffered any damages or incurred any response costs as a result of any
9 acts or omissions of Defendant. Therefore, Plaintiff is barred from asserting any claims against
10 Defendant.

11 AS A FIFTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
12 Complaint, Defendant alleges that Plaintiff voluntarily and knowingly and/or impliedly assumed the
13 risk or risks attendant to the matters complained about in the Complaint, completely barring, or
14 proportionately reducing, Plaintiff's right of recovery herein if any there be.

15 AS A SIXTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
16 Complaint, Defendant alleges that Plaintiff's actions against Defendant are not based on good faith,
17 are frivolous, and entitle Defendant to an award of reasonable expenses and attorneys' fees.

18 AS A SEVENTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of
19 the Complaint, Defendant alleges that the acts, omissions, and/or conduct of Defendant was not the
20 proximate cause of the losses, damages and/or injuries, if any, as alleged in Plaintiff's Complaint and
21 which herein are denied.

22 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
23 Complaint, Defendant alleges that the injuries, losses and damages, if any, as alleged in Plaintiff's
24 Complaint and which herein are denied, were not caused by any act omission or conduct by
25 Defendant, but were caused by some other act, omission, party or conduct over which Defendant
26 exercised no supervision, control, and/or ownership of the subject property and for which it was not
27 responsible.
28

1 AS A NINETEENTH AFFIRMATIVE DEFENSE, to each and every claim for relief of the
2 Complaint, Defendant alleges that Plaintiff was not by reason of a disability denied the benefits of
3 the services, programs or activities of this Defendant and thus her claims for discrimination herein
4 against this Defendant are barred.

5 AS A TWENTIETH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE TO THE
6 COMPLAINT, to each and every claim for relief of the Complaint, Defendant alleges that Plaintiff
7 has failed to join all necessary and indispensable parties to this action that may have contributed
8 and/or caused the alleged fall on December 19, 2016.

9 AS A TWENTY-FIRST, SEPARATE AND FURTHER AFFIRMATIVE, to each and every
10 claim for relief of the Complaint, Defendant alleges that the acts and/or omissions, if any, of this
11 Defendant were not the proximate cause of the losses, damages, and/or injuries, if any, resulting
12 from the alleged fall on December 19, 2016.

13 AS A TWENTY-SECOND, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
14 each and every claim for relief of the Complaint, Defendant alleges the injuries, losses and damages
15 allegedly sustained by Plaintiff as a result of the alleged fall on December 19, 2016, were not caused
16 by any act or omission of this Defendant, but were caused by some other acts, process or event,
17 including but not limited to the operation of nature, over which this Defendant exercised no
18 supervision and control, and for which it was not responsible.

19 AS A TWENTY-THIRD, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
20 each and every claim for relief of the Complaint, Defendant alleges if Plaintiff suffered any injuries
21 and/or damages as a result of the alleged fall on December 19, 2016, which is denied, such injuries
22 and/or damages were and are the sole and proximate result of an unavoidable accident and/or event.

23 AS A TWENTY-FOURTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
24 each and every claim for relief of the Complaint, Defendant alleges, without admitting any liability
25 whatsoever, that Defendant had no notice, either actual or constructive, at any time relevant herein of
26 any dangerous, hazardous or defective condition located on a portion of the sidewalk at or near 1577
27 Solano Avenue, California, as stated in the Complaint (California Government Code § 835.2)
28

1 AS A TWENTY-FIFTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
2 each and every claim for relief of the Complaint, Defendant alleges that Plaintiff, while being
3 pushed in a wheelchair down the portion of the sidewalk at or near 1577 Solano Avenue, California,
4 was careless and negligent in and about the matters alleged in the Complaint, and that said
5 carelessness and negligence on Plaintiff's own part proximately contributed to the happening of the
6 incident and to the injuries, loss and damages complained of, if any they were, and said negligence
7 on the part of the Plaintiff shall diminish and/or bar any recovery herein in direct proportion to the
8 extent of such negligence under the doctrine of comparative negligence and/or contributory
9 negligence.

10 AS A TWENTY-SIXTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
11 each and every claim for relief of the Complaint, Defendant alleges that prior to and at the time of
12 the occurrence of the alleged fall which is the subject of the Complaint, Plaintiff had knowledge of
13 those matters alleged in the Complaint, that Plaintiff did, with the above-mentioned knowledge
14 voluntarily and of her own free will, place herself in an unsafe and dangerous position on December
15 19, 2016, and by reason thereof, said Plaintiff had assumed the risk and all risks ordinarily incident
16 thereto; and said assumption of risk bars recovery herein.

17 AS A TWENTY-SEVENTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
18 each and every claim for relief of the Complaint, Defendant alleges that Plaintiff failed to mitigate
19 her alleged damages resulting from the alleged fall, as required by law.

20 AS A TWENTY-EIGHTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
21 each and every claim for relief of the Complaint, Defendant alleges that if there is any negligence or
22 liability of any of the parties named herein as it related to the alleged fall, it is the sole and exclusive
23 negligence of other defendants, whether named or unnamed, and not of this Defendant.

24 AS A TWENTY-NINTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
25 each and every claim for relief of the Complaint, Defendant alleges that damages alleged in the
26 Complaint sustained by Plaintiff, if any, as a result of alleged fall on the portion of the sidewalk at or
27 near 1577 Solano Avenue, California, were either wholly or in part, negligently caused by persons,
28 firms, corporations or entities other than Defendant, and said negligence comparatively reduces the

1 percentage of negligence, if any, by this Defendant under the doctrine of comparative negligence or
2 comparative fault and/or based upon the doctrines of equitable indemnity and contribution.

3 AS A THIRTIETH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each and
4 every claim for relief of the Complaint, Defendant alleges, without admitting liability or that
5 Plaintiff has suffered or will suffer any loss, damage or injury, in the alternative, that any loss,
6 damage or injury which Plaintiff has suffered or will suffer as a result of the alleged fall stated in the
7 Complaint or otherwise, is the direct and proximate result of the unforeseen/unforeseeable negligent,
8 grossly negligent or criminal acts or omissions of an intervening third party or parties, or other acts
9 or omissions for which such party or parties may be strictly liable, and that such acts or omissions
10 constitute independent, intervening, and superseding cause of the Plaintiff's alleged injuries, and
11 completely bar any recovery against Defendant.

12 AS A THIRTY-FIRST, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
13 and every claim for relief of the Complaint, Defendant alleges that Code of Civil Procedure §
14 1431.1, et seq., limits general damages and abates joint and several liability. Defendant requests that
15 the Court apportion the damages, if any, and require Defendant to pay only its fair and legal
16 percentage of liability as determined by the trier of fact and/or law.

17 AS A THIRTY-SECOND, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
18 each and every claim for relief of the Complaint, Defendant alleges that it is entitled to recover
19 reasonable expenses including, but not limited to, attorneys' fees and costs from Plaintiff and her
20 counsel in that the Complaint on file herein is frivolous and was brought and maintained without
21 reasonable cause and in bad faith, and therefore is totally and completely without merit. (Code of
22 Civil Procedure §§ 128.5, 128.7, 1021.7, and 1038.)

23 AS A THIRTY-THIRD, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
24 and every claim for relief of the Complaint, Defendant alleges that this Complaint is barred by the
25 doctrine of laches, estoppel, waiver, or unclean hands.

26 AS A THIRTY-FOURTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
27 each and every claim for relief of the Complaint, Defendant alleges that the Complaint is barred by
28 reason of the fact that Defendant is immune from prosecution under the claims and for the acts

1 alleged by virtue of California Government Code § 800, et seq., and more particularly but not
2 limited to §§ 815, 815.2, 815.4, 815.6, 818, 818.6, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.4,
3 821.6, 821.8, and 835, et seq., and by virtue of California Government Code § 900, et seq.

4 AS A THIRTY-FIFTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
5 and every claim for relief of the Complaint, Defendant alleges that the Complaint is barred in its
6 entirety based upon the immunities set forth in Code of Civil Procedure § 846, as well as California
7 Government Code §§ 831.4 and 831.7, all pertaining to Plaintiff's recreational use of the recreational
8 sidewalk on December 19, 2016 and, therefore, Plaintiff is not entitled to any relief whatsoever.

9 AS A THIRTY-SIXTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
10 and every claim for relief of the Complaint, Defendant alleges that Plaintiff's claims are barred
11 against Defendant pursuant to the principles of Sovereign Immunity, including but not limited to
12 Amendment XI of the United States Constitution.

13 AS A THIRTY-SEVENTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
14 each and every claim for relief of the Complaint, Defendant alleges that there is no liability for any
15 injury or damages, if any there were, for failure to inspect or for the negligent inspection of the
16 portion of the sidewalk at or near 1577 Solano Avenue, California, which is owned and/or controlled
17 by a third party. (California Government Code §§ 818.6, 821.4, 830.6)

18 AS A THIRTY-EIGHTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
19 each and every claim for relief of the Complaint, Defendant alleges that Plaintiff's claim is barred in
20 that the injuries and damages, if any, sustained by the Plaintiff as a result of the alleged fall while
21 being pushed in a wheelchair down the portion of the sidewalk at or near 1577 Solano Avenue, were
22 a direct and proximate result of the acts, omissions or negligence of third parties not within the
23 knowledge or control of this Defendant, and were sustained, if at all, without any negligence or
24 wrongful act or omission on the part of this Defendant. (California Government Code § 820.8.)

25 AS A THIRTY-NINTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
26 and every claim for relief of the Defendant alleges that at all times relevant to this litigation, the
27 Plaintiff's injuries or damages were merely caused by the adoption or failing to adopt an enactment
28 or by failing to enforce a law or enactment as it relates to maintenance, repair, and warnings of the

1 portion of the sidewalk at or near 1577 Solano Avenue, California, thereby precluding the Plaintiff
2 from recovering from Defendant. (California Government Code § 818.2.)

3 AS A FORTIETH, SEPARATE AND FURTHER AFFIRMATIVE, to each and every claim
4 for relief of the Complaint, Defendant alleges that at all times relevant to this litigation, this
5 Defendant acted in good faith, without malice, as it relates to the warning, maintenance, and repair
6 of the portion of the sidewalk at or near 1577 Solano Avenue, California, and under the apparent
7 authority of an enactment thereby precluding Plaintiff from recovering from this Defendant.
8 (California Government Code § 820.6.)

9 AS A FORTY-FIRST, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
10 and every claim for relief of the Complaint, Defendant alleges to the extent Plaintiff's damages or
11 injuries resulting from the alleged fall were caused by a natural weather condition, Plaintiff is
12 precluded from recovering from this Defendant. (California Government Code § 831.)

13 AS A FORTY-SECOND, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
14 each and every claim for relief of the Complaint, Defendant alleges to the extent Plaintiff's damages
15 or injuries as a result of the fall were caused by a natural condition, Plaintiff is precluded from
16 recovering from this Defendant. (California Government Code § 831.2.)

17 AS A FORTY-THIRD, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
18 and every claim for relief of the Complaint, Defendant alleges its conduct, if any, which allegedly
19 created the condition of the portion of the sidewalk at or near 1577 Solano Avenue, California, was
20 reasonable, and therefore, Plaintiff is precluded from recovering from this Defendant. (California
21 Government Code § 835.4.)

22 AS A FORTY-FOURTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to
23 each and every claim for relief of the Complaint, Defendant alleges that pursuant to City ordinances,
24 maintenance and liability in the area of the sidewalk at or near 1577 Solano Avenue, California,
25 where the Plaintiff's accident allegedly occurred, was the responsibility of the neighboring property
26 owner and/or named or non-named parties.

27 AS A FORTY-FIFTH, SEPARATE AND FURTHER AFFIRMATIVE DEFENSE, to each
28 and every claim for relief of the Complaint, Defendant alleges that the condition in question located

on the portion of the sidewalk at or near 1577 Solano Avenue, California, where the Plaintiff's accident allegedly occurred, was of such a minor, trivial, or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury. (California Government Code § 830.2.)

Defendant alleges, without admitting any liability whatsoever, that Defendant has insufficient knowledge or information on which to form a belief as to whether Defendant may have additional, as yet unstated, defenses available. Defendant reserves herein the right to assert additional defenses in the event discovery indicates that they would be appropriate.

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial, as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That judgment is entered in favor of Defendant and against Plaintiff on all claims;
2. That Plaintiff take nothing by way of this Complaint;
3. For attorneys' fees as allowed by statute;
4. For costs of suit incurred herein; and
5. For such other and further relief as the court may deem just and proper.

Date: October 26, 2017

CLARK HILL LLP

By: /s/ Ann M. Asiano
 ANN M. ASIANO
 SARA ALLMAN
 MATTHEW T. BRAND
 Attorneys For Defendant
 CITY OF ALBANY